

## REMARKS

### State of the Claims

Claims 1-20 are pending. Claim 1 has been amended to provide proper antecedent basis for the subsequent dependent claims. No new matter has been added, and all amendments herein are fully supported by the specification and drawings.

### Drawings

The drawings are objected to under 37 CFR § 1.83(a) because the Examiner asserts that they fail to show the plastic material of the over-cap in the cross-sectional views as described in the specification. According to the Examiner, the drawings depict metal material.

The drawings have been corrected, and a new set of formal drawings is included with this response submission. Thus, the Examiner's objection to the drawings is obviated and should be rescinded.

### Specification

The Examiner states that the title of the invention is not descriptive and should be altered. The Examiner suggests a new title: "SUBSTANTIALLY TRIANGULAR-SHAPED OVER-CAP HAVING INNER SKIRT PROJECTIONS EXTENDING PARTIALLY AROUND THE PERIMETER". [Emphasis added.]

Applicants point out that they do not claim skirt projections extending partially around the perimeter.<sup>1</sup> Instead, Applicants claim a skirt that extends substantially continuously about the substantially triangular shaped perimeter. Applicants contend that to change their title to the Examiner's suggested title would unduly limit Applicants' claims and might constitute new matter.

In addition, Applicants point out that Figures 1, 6 and 10 of their specification, in fact, show the substantially triangular-shaped over-cap. Also, the specification is replete with

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<sup>1</sup> Applicants' Claim 1: A substantially triangular-shaped over-cap, comprising:

- a) a body having a substantially triangular-shaped perimeter with three perimeter corners and three perimeter sides, the body further having an area; and
- b) a skirt extending substantially continuously about the substantially triangular shaped perimeter, the perimeter having a length, the skirt including a skirt corner extending substantially downwardly from one of the perimeter corners, the skirt corner including at least one inner extension having a length and extending toward the area adjacent to the body, wherein the length of the at least one inner extension is less than about 70 percent of the length of the perimeter.

discussion and detailed explanation about Applicants' substantially triangular shaped over cap; e.g., "The over-caps according to the present invention are substantially triangular-shaped and are adapted to cover a similarly substantially triangular-shaped end (e.g., an open or closed end) of a container."<sup>2</sup> Lastly, Applicants claims, and specifically Claim 1, claim a "substantially triangular-shaped cap."<sup>3</sup>

Thus, Applicants' contend that in view of Applicants' figures, written specification, and claims, one of skill in the art would find Applicants' title sufficiently descriptive of the subject matter contained in the specification. Applicants further contend that the Examiner's requirement of "at least one technical or inventive feature" in the title is not a legal requirement mandated by case law, the patent laws, the patent rules or the MPEP. Lastly, Applicants contend that the Examiner's suggested title is improper, inaccurate and unnecessarily long. In fact, as to title length, the patent rules are quite clear: "The title of the invention...must be as short and specific as possible."<sup>4</sup> The Examiner's suggested title is both long and non-specific since it is inaccurate in its description. Therefore, Applicants respectfully contend that their title meets all legal requirements and decline the use of the Examiner's suggested title.

Applicants therefore request that the Examiner rescind the objection to the title and allow Applicants' use of their existing title of the invention.

#### 35 U.S.C. § 112 Rejection

Claims 1-15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner states that the limitation "the total length of all of the inner extensions" of Claim 1 does not serve to provide the proper antecedent basis.

Claim 1 has been amended to provide the proper antecedent basis within Claim 1, thus removing the discrepancy. Applicants therefore respectfully request reconsideration and allowance of Claims 1-15 over the Examiner's 35 U.S.C. § 112, second paragraph, rejection.

#### 35 U.S.C. § 103 Rejection

Claims 1-6, 9 and 12-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Michaud, et al. (U.S. Patent No. 4,742,934).

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<sup>2</sup> Id. at page 4, lines 27-29.

<sup>3</sup> Id. at page 17, lines 2-8.

<sup>4</sup> 37 CFR § 1.72(a).

The Examiner states that Michaud '934 teaches the claimed over-cap except for the length of at least one inner extension about the perimeter of the over-cap (i.e., "only that the extensions [of Michaud '934] are at the corners of the perimeter--or an intersection of points bounding the at least one extension."

The Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inner extensions to be less than about 70% of the perimeter of the over-cap, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. The Examiner also asserts that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inner extensions at a distance bounded by intersecting points 20% along two intersecting imaginary lines of the over-cap.

Applicants respectfully disagree with the Examiner's assertions. First, the Examiner has provided no basis either in the references themselves or from knowledge generally available to one of ordinary skill in the art for her assertions. Instead, the Examiner merely asserts without proper basis relying therefore on her own personal knowledge. Applicants disagree with the Examiner's use of her own personal knowledge and respectfully request that the Examiner provide an affidavit with references therein that properly establish the validity of the Examiner's assertions.

If Applicants traverse an assertion made by the Examiner, the Examiner should cite a reference in support of her position.<sup>5</sup> When a rejection is based on facts within the personal knowledge of the Examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the Applicant, by an affidavit from the Examiner.<sup>6</sup> If the Examiner fails to provide a suitable affidavit that bolsters her reasons for rejection herein, the rejection should be withdrawn.

Applicants also respectfully disagree that Michaud '934 teaches or suggests Applicants' over-cap as claimed. Applicants' Claim 1 provides that the skirt attached to the over-cap extends substantially continuously about the perimeter of the over-cap. In contrast, Michaud '934 teaches away from this substantially continuous extension when it states that "lid segment 38 loosely overlies both outer wall 28 and sealing lip 30 of tray segment 20 except in corner areas A or the various points of intersection of the sidewalls of container lid 12 and container tray 10."<sup>7</sup>

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<sup>5</sup> 37 CFR § 104(d)(2); MPEP 2144.03.

<sup>6</sup> Id.

<sup>7</sup> Michaud, et al. (U.S. Patent No. 4,742,934): col. 4, lines 62-66.

[Emphasis added.] Michaud's exception teaches away from Applicants' invention because it teaches breaks in the lid segment about the container lid and cannot therefore be continuous.

Therefore, since Applicants contend that the Examiner has improperly used personal knowledge to make a rejection and since Applicants assert that Michaud '934 teaches away from Applicants' claims, Applicants respectfully request reconsideration and allowance of Claims 1-6, 9 and 12-20 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Michaud '934 in view of Terauds (U.S. Patent No. 4,535,889). The Examiner states that Terauds '889 teaches a plurality of inner extensions on a skirt wall.

Applicants respectfully disagree that Michaud '934 in view of Terauds '889 teaches Applicants' invention. As mentioned above, it is Applicants contention that the Examiner has used personal knowledge that must now be verified by affidavit to continue to be considered part of the Examiner's rejection, and also that Michaud '934 teaches away from Applicants' invention because Michaud '934 does not teach a substantially continuous skirt about the periphery of their lid. The addition of Terauds '889 does not cure this flaw since Terauds '889 also teaches away from Applicants' skirt. Terauds '889 neither has a skirt or a feature that could be taken as Applicants' substantially continuous skirt; note Terauds' thumb notch recess 80 about dome lid D.<sup>8</sup>

Regarding Terauds '889, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a plurality of inner extensions for the single inner extension of Michaud '934. However, the Examiner does not provide any motivation from the references to make the asserted change either from Michaud '934, Terauds '889 or from any knowledge generally available to one of skill in the art. Applicants therefore believe that the Examiner has so asserted based upon personal knowledge rather than anything in the references themselves or from knowledge generally available to one of skill in the art, and therefore respectfully request that the Examiner provide an affidavit that offers proof of the validity of her assertions regarding Terauds '889.

In view of the reasons set forth above, Applicants contend that the combination of Michaud '934 in view of Terauds '889 does not meet Applicants' invention both because the combination teaches away from Applicants' invention and also because Applicants believe that the Examiner has relied on personal knowledge to make her assertions. Therefore, Applicants

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<sup>8</sup> Terauds (U.S. Patent No. 4,535,889) at col. 8, lines 29-49.

respectfully request reconsideration and allowance of Claims 7 and 8 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Michaud '934 in view of Blanchard (U.S. Patent No. 4,026,459).

Applicants respectfully disagree that Michaud '934 in view of Blanchard '459 teaches Applicants' invention. As mentioned above, it is Applicants' contention that Michaud '934 teaches away from Applicants' invention because Michaud '934 does not teach a substantially continuous skirt about the periphery of their lid, but rather a discontinuous skirt. Also, Applicants contend that the Examiner has used personal knowledge in making her assertions, which assertions Applicants respectfully request be verified by affidavit. The addition of Blanchard '459 to the combination does not cure these flaws.

Applicants therefore respectfully request reconsideration and allowance of Claims 10 and 11 over the Examiner's 35 U.S.C. § 103(a) rejection under Michaud '934 in view of Blanchard '459.

**SUMMARY**

The rejections in the Office Action have been discussed and, Applicants believe, the proper amendments have been set forth to address the rejections.

In light of both the amendments and the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

GERARD LAURENT BUISSON, ET AL.

By: 

Theodore P. Cummings, Esq.  
Attorney for Applicants  
Registration No. 40,973  
(513) 634-1906

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